

**SYSTEM OF HIGHER EDUCATION  
PROCEDURES AND GUIDELINES MANUAL**

**CHAPTER 16**

**EXPORT CONTROL AND ECONOMIC SANCTIONS POLICY**

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**NEVADA SYSTEM OF HIGHER EDUCATION  
PROCEDURES AND GUIDELINES MANUAL**

**CHAPTER 16**

**EXPORT CONTROL AND ECONOMIC SANCTIONS POLICY**

**Section 1. Purpose**

Export control and economic sanctions regulations address the export of proprietary, confidential or restricted items, information, services and software, as well as interactions with embargoed or sanctioned countries, organizations and individuals. They exist to protect the national security, foreign policy and economic interests of the United States. The purpose of the Nevada System of Higher Education policy is to ensure compliance with federal export control and economic sanctions regulations.

(Added 9/15)

**Section 2. Policy Statement and Institution Policies**

NSHE and its institutions, employees and students will comply with all U.S. export control and economic sanctions laws and regulations, including obtaining any required export licenses, for the transfer of export- controlled materials, data, technology, or equipment to a foreign national, either in the U.S. or abroad. Each NSHE institution is required to formalize a written policy addressing export control and economic sanctions regulations and institutional compliance procedures in the following areas:

- a. Research conducted by NSHE faculty and students on campus and abroad (to include foreign visitors, volunteers and facility users on campus);
- b. Items shipped outside the U.S.;
- c. International Programs – includes students and faculty studying or teaching abroad;
- d. Purchasing/Accounting (vendor payments);
- e. Sponsored Projects/Technology Transfer;
- f. Human Resources; and
- g. Foreign Travel.

Each NSHE institution may in its discretion adopt or modify the Model Institutional Procedure for compliance with federal regulations, which can be found in the Appendix following this policy. The Chancellor has authority to supplement or revise the NSHE Export Control and Economic Sanctions Policy.

(Added 9/15)

**Section 3. Federal Agency Regulation and Enforcement**

The three main agencies that regulate and enforce the majority of federal export control and economic sanctions regulations are:

- 3.1 U.S. Department of Commerce - enforces the Export Administration Regulations (EAR) which regulate the export and re-export of most commercial items including “dual-use” items that have both commercial and military or proliferation applications;

- 3.2 U.S. Department of State - enforces the International Traffic in Arms Regulations (ITAR), which regulate defense articles and defense services; and
- 3.3 U.S. Department of the Treasury - oversees U.S. economic sanctions and embargoes through its Office of Foreign Assets Control (OFAC) and prohibits the provision of anything of value, either tangible or intangible, to sanctioned countries, organizations or individuals.

(Added 9/15)

## **Section 4. Controlling Law, Jurisdiction, Exclusions and Exemptions**

- 4.1 Federal regulations supersede any conflicting contractual requirements, state laws or regulations and any institutional policies or procedures that are in conflict with federal regulations. Only the federal agencies responsible for the export control and economic sanctions regulations have the authority to make determinations and issue licenses. Neither the institution nor a sponsoring entity has such authority.
- 4.2 In accordance with federal regulations, the following are excluded or exempt from export controls:

### **4.2.1 Fundamental Research.**

Fundamental research (basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S. resulting in information that is ordinarily published and shared broadly within the scientific community) is excluded from export control regulations. This means that the intellectual product of fundamental research (publishable results) is excluded from export controls. However, tangible items resulting from fundamental research (prototypes, materials, some encryption software, etc.) are not excluded and authorization may be needed for export.

Research will not qualify for this exclusion if: (1) the institution or investigator accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that publication will not compromise the patent rights of the sponsor; or (2) the research is federally funded and specific access and dissemination controls regarding the resulting information have been accepted by the Institution or investigator. This exclusion also applies to research conducted by scientists or engineers working at other institutions and includes research conducted at the Desert Research Institute.

The fundamental research exclusion: (1) applies only to information; and (2) does not apply to a sponsor's existing proprietary information when some or all of that information is required to be held confidential.

Note: Research performed at the Desert Research Institute may qualify as exempt corporate fundamental research in accordance with 15 CFR 734.8(e) to the extent that the DRI researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls.

4.2.2 Educational Instruction. Export control regulations do not apply to information released in academic catalog-listed courses or in teaching labs associated with those courses. Material released in catalog courses is considered publicly available, and therefore excluded from U.S. export controls, by delivery in instruction at universities in the U.S. or abroad, except for:

- a. Some encryption software ;
- b. Principles not commonly taught ; and
- c. Sensitive nuclear technology

4.2.3 Information in the Public Domain/Publicly Available.

Information that is published and generally available to the public, as well as publicly available technology and some encryption software, is outside the scope of the export control regulations. This exclusion does not apply to information if there is reason to believe it may be used for weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding.

Public Domain is defined as information that is published and generally accessible to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions available without restriction to anyone who may want to purchase the published information; (3) through second-class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the United States; (7) through public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant U.S. government department or agency; and (8) through fundamental research.

4.2.4 Exemption for Disclosures to Bona Fide Full-time Employees (ITAR-regulated research only).

ITAR regulations exempt disclosures of unclassified technical data in the U.S. by U.S. universities to foreign nationals where 1) the foreign national is a bona fide full-time regular employee, 2) the employee's permanent abode throughout the period of employment is in the U.S., 3) the employee is not a national of an embargoed country, and 4) the institution informs the employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval. Most graduate students are not regular full-time employees and disclosures to them will not qualify for this exemption.

- 4.3 Economic Sanctions. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) administers a number of different sanctions programs. The sanctions can either be comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Prohibited transactions are trade or financial transactions and other dealings, such as providing services, in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute.

The list of embargoed and sanctioned countries and entities is updated frequently. A summary of each particular embargo or sanctions program may be found under the Resources tab on OFAC's website: <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

To avoid participating in transactions with prohibited entities, NSHE institutions should reference OFAC's list of Specially Designated Nationals and Blocked Persons ("SDN List"). Examples of activities that may require a license from OFAC include:

- a. Importing items from a sanctioned country, such as samples for analysis;
- b. Attending a conference in a sanctioned country;
- c. Exporting, re-exporting, the sale or supply of items or technology to a sanctioned country;
- d. Engaging in a transaction involving a Specially Designated National or other prohibited entity;
- e. Providing a service to a sanctioned country or Specially Designated National.

(Added 9/15)

## **Section 5. Explanation of Terms**

- 5.1 Export. Definitions of exports differ slightly between the ITAR and EAR. The ITAR definition includes sending or taking a defense article out of the United States; disclosing (including oral or visual disclosure) or transferring technological data to a foreign person, whether in the United States or abroad; and performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad. ) The EAR definition includes an actual shipment or transmission of items subject to the EAR out of the United States, and any release of technology or software subject to the EAR to a foreign national.
- 5.2 Employee. All institution employees, full-time and part-time; including student employees, consultants, visitors, and others using institution resources.
- 5.3 Empowered Official (EO). A U.S. citizen who is legally empowered in writing by an institution to sign export license applications or other requests for approval on behalf of the institution. The EO must understand the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the laws and regulations. The EO has the independent authority to inquire into any aspect of a proposed export, verify the legality of the transaction and the accuracy of the information to be submitted, and refuse to sign a license application or other request for approval without prejudice or other adverse recourse.

- 5.4 Export Control Officer (ECO). A person who is identified formally at an institution for purposes of institutional compliance with export control regulations. It is not the role of the ECO to determine what research or activities academic and institution research personnel may engage in. Such a determination will fall to the individual's college, department or unit, and the Office of the VP for Research.
- 5.5 OFAC Terms:
- 5.5.1 Embargo. An embargo is the complete or partial limitation of trade and commerce with a particular country or group of countries. Under OFAC regulations, a sanction or embargo may include prohibitions on imports and exports of items, as well as services.
- 5.5.2 Sanction. An economic sanction is a ban on certain types of trade. Under OFAC regulations, a sanction or embargo may include prohibitions on imports and exports of items, as well as services.
- 5.5.3 Specially Designated National (SDN). OFAC publishes a list of individuals, research organizations, and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists non country-specific individuals, groups and entities, such as terrorists and narcotics traffickers targeted under the different sanctions programs. Designated individuals, research organizations, and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them. The SDN List is frequently updated.

(Added 9/15)

## **Section 6. Authority of Empowered Official and Export Control Officer**

The institution president shall appoint or approve the appointment of an ECO and EO for purposes of compliance with U.S. export control regulations. Both ECO and EO shall receive authority from the institution president to perform his/her job duties to help ensure the compliance with all applicable federal laws and regulations. The ECO and EO may be the same individual.

(Added 9/15)

## **Section 7. Implementation of an Export and Economic Sanctions Compliance Program**

Export control and economic sanctions regulations affect many areas across campus. To implement this Policy, the ECO/EO shall work with the appropriate vice presidents, college deans, department heads, directors, the Compliance Office, and the Office of Legal Affairs or General Counsel to implement procedures that comply with the export control regulations.

(Added 9/15)

## Section 8. Sanctions – Disciplinary Action

8.1 Sanctions. The federal laws and regulations governing export control provide for criminal and civil sanctions against the institution and against individuals.

8.1.a Export Administration Regulations (EAR).

The EAR contain criminal and civil sanctions, which include fines up to \$1,000,000 or two times the value of the exports for each violation, and up to 10 years in prison for each violation or both. Additionally, for each violation of the EAR the following may be imposed:

1. Denial of export privileges; and/or
2. Exclusion from practice; and/or
3. Seizure/forfeiture of goods

8.1.b International Emergency Economic Powers Act (IEEPA).

The IEEPA contains criminal and civil sanctions, which include fines up to \$1,000,000 or five times the value of the exports for each violation, and up to 20 years in prison for each violation, or both. Additionally, for each violation of the IEEPA the following may be imposed:

1. Denial of export privileges; and/or
2. Exclusion from practice; and/or
3. Seizure/forfeiture of goods.

Note: Penalties associated with violations of EAR currently fall under the purview of the IEEPA, pending reauthorization of the EAR.

8.1.c International Traffic in Arms Regulations (ITAR).

The ITAR contain criminal and civil sanctions, which include fines up to \$1,000,000 or five times the value of the exports for each violation, and up to 10 years in prison for each violation, or both. Additionally, for each violation of the ITAR the following may be imposed:

1. Denial of export privileges; and/or
2. Seizure/forfeiture of goods.

8.1.d Office of Foreign Assets Control (OFAC). The OFAC regulations contain criminal and civil sanctions, which include fines up to \$1,000,000 or five times the value of the exports for each violation, and up to 20 years in prison for each violation, or both. Additionally, for each violation of the OFAC regulations, the seizure and forfeiture of goods may result.

8.2 Disciplinary Action.

In addition to civil and criminal penalties that may apply under applicable laws to individual institution personnel/students and to the institution, violation of export control laws and regulations may subject the violator to remedial or disciplinary action by in accordance with the Board of Regents' Code, Title 2, Chapters 6, 8 and 10, and applicable institutional policies procedures for misconduct, up to and including termination or dismissal.

(Added 9/15)

## **Section 9. Training Requirements**

All ECO/EOs and any other individuals with responsibility for export control matters shall receive training in export control and economic sanctions regulations and procedures.

(Added 9/15)

## **Section 10. Model Institutional Guidelines**

Model Institutional Guidelines for Compliance with U.S. Export Control and Economic Sanctions Regulations are provided in the Appendix to this policy. These Model Guidelines include the essential elements that should be a part of each institution's overall export control effort. Institutions may adopt the Model Guidelines in their entirety or may modify or supplement them as appropriate in light of the institution's activities that are subject to export control and economic sanctions regulation.

(Added 9/15)



## Appendix

### Nevada System of Higher Education

#### Model Institutional Guidelines for Compliance with U.S. Export Control and Economic Sanctions Regulations

##### 1. Purpose.

This policy is intended to help ensure compliance with the Nevada System of Higher Education (NSHE) Export Control and Economic Sanctions Policy set forth in the *Procedures and Guidelines Manual* (PGM), Chapter 16, and with federal export control and economic sanctions regulations. All faculty, staff, students and visitors must comply with this policy, as well as all applicable export control regulations, including obtaining any required export licenses as appropriate. In the event any terms of these guidelines conflict with any export control law, then the export control law will prevail.

##### 2. Background.

The export of certain technologies, software and hardware is regulated and controlled by federal law for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction and for competitive trade reasons. Employees, students and visitors are required to comply with the U.S. export control laws and regulations, including those implemented by the Department of State, through its International Traffic in Arms Regulations (ITAR), the Department of Commerce, through its Export Administration Regulations (EAR), and the Department of the Treasury, through its Office of Foreign Assets Controls (OFAC) (See PGM, Chapter 16).

While some research conducted on U.S. college and institution campuses is excluded from these regulations under the Fundamental Research Exclusion (as discussed in PGM, Chapter 16, Section 4) and is considered to be in the public domain, research involving specified technologies controlled under the EAR and/or ITAR, or transactions and exchanges with designated countries, individuals and entities, may require the institution to obtain prior approval from the appropriate federal agency before allowing foreign nationals to participate in controlled research, collaborate with a foreign company and/or share research--verbally or in writing--with persons who are not U.S. citizens or permanent residents. The consequences of violating these regulations can be quite severe, ranging from loss of research contracts to monetary penalties and jail time for the individual violating these regulations. (See PGM, Chapter 16, Section 8).

The export control regulations affect not only research conducted on campus, but also travel and shipping items outside the U.S. Simply traveling to certain sanctioned countries could require a license from OFAC. OFAC sanctions prohibit transactions and the exchange of goods and services with certain countries and with designated persons and entities. Multiple lists of denied individuals and parties are maintained and enforced by federal agencies including the Departments of State, Commerce, and Treasury. Shipping items outside the U.S. as well as taking controlled items on a flight, even if the shipping or traveling is done in the conduct of research, could require a license from these agencies.

The institution is committed to full compliance with all applicable U.S. export control laws and regulations.

### 3. Compliance Authority.

The president shall appoint or approve the appointment of an Export Control Officer (ECO) and Empowered Official (EO) (defined in PGM, Chapter 16, Section 5) for purposes of compliance with U.S. export control laws and regulations. Both ECO and EO shall receive authority from the institution president to perform his/her job duties. The duties and responsibilities of ECO and EO may be assigned to one individual.

### 4. Implementation of an Export Control Compliance Program.

The export control regulations affect many areas across campus. To implement this Policy, the ECO/EO shall work with the appropriate vice presidents, college deans, department heads, directors, the Compliance Office, and the Office of Legal Affairs or General Counsel to implement procedures that comply with the export control regulations. Areas, offices, or activities that are affected by export compliance include, but are not limited to:

- a. Research conducted by NSHE faculty and students on campus as well as research projects conducted abroad (also includes foreign visitors, volunteers and facility users on campus);
- b. Items shipped outside the U.S.;
- c. International programs – includes students and faculty studying or teaching abroad;
- d. Office for Purchasing/Accounting (vendor payments);
- e. Office of Sponsored Projects/Sponsored Projects/Technology Transfer;
- f. Human Resources Department; and
- g. Travel Office – for travel outside the U.S.

The ECO/EO shall develop an institution-specific export controls compliance program that documents and disseminates information on roles, responsibilities, and procedures for identification, approval, licensing, and tracking of items or activities subject to the export control laws. The program should also include record-keeping, awareness training, and procedures for self-assessment and monitoring. Any institution specific procedures must be posted on the institution website.

Typically, the responsible department/unit for research is the Office of Sponsored Programs or Sponsored Projects or the Office of Research Integrity. However, since export control compliance affects the entire institution, the ECO/EO may report centrally to an administrator such as the provost, dean, Legal Office, or institutional compliance officer or director.

### 5. Penalties and Disciplinary Action.

In addition to civil and criminal penalties that may apply under applicable laws to individual institution personnel/students, visitors and to the institution, violation of export control laws and regulations may subject the violator to remedial or disciplinary action in accordance with the Board of Regents' Code, Title 2, Chapters 6, 8 and 10, and applicable institutional policies or procedures for misconduct, up to and including termination or dismissal.

## 6. Procedures and Guidelines.

Set forth below are procedures and guidelines regarding:

- a. International travel and/or studies abroad.
- b. Sponsored projects/technology transfer (for research conducted by faculty and students on campus as well as research projects conducted abroad).
- c. On-campus foreign visitors.
- d. International shipping.
- e. Record-keeping.
- f. Restricted or denied party screening.
- g. Export control training.

### A. INTERNATIONAL TRAVEL/STUDIES ABROAD.

Institutions' faculty, staff, students, affiliates and volunteers travel internationally as part of institution research, education, service or employment. Where a person travels, what items are being taken, what services are being provided, with whom they are working and the purpose of the trip may present export control concerns for the individual, the institution and NSHE.

1. How do export controls affect my international travel or study abroad program?
  - a. Travel to most countries does not usually constitute an export control problem.
  - b. Note that laptops and GPS devices may be restricted upon entrance into particular countries, which will mostly affect activities involving equipment, technical software, or technical information in other media, including presentations.
  - c. This can apply even to laptops and other widely available technologies.
  - d. Information contained within the laptop, such as reports, data, proprietary information may also be subject to export control.
  - e. Additionally, certain entities have been placed on "restricted-party" lists that could prohibit us from doing business with them.
2. What do I need to do before leaving on international travel or a study abroad program?
  - a. Ensure that your destination is not subject to a boycott or embargo (For the most current list of embargoes countries, visit the U.S. Department of Treasury website).
  - b. Review current US Department of Treasury Sanctions<sup>1</sup> and Consolidated Screening Lists<sup>2</sup> if collaborating with foreign colleagues or entities, or for projects that involve collaboration with or providing services or assistance to a foreign country or a government-controlled organization, and to ensure that you don't need government authorization.

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<sup>1</sup> Go to <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>, and <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> to review country specific sanctions programs.

<sup>2</sup> Go to [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp) to review the consolidated screening list.

- c. If it is a restricted country, licenses must be obtained and additional restrictions could apply to the program - this can be a lengthy process, so start as soon as you have all necessary information.
  - d. If the institution is entering into an agreement or contract with a foreign entity in conjunction with your international travel or study abroad program, restricted party screening should be run prior to entering the agreement or contract to ensure that the entity does not appear on any restricted-party list.
  - e. If institution property (laptops, PDAs, etc.) is being exported during the study abroad, the equipment must be cleared through the institution ECO/EO.
  - f. If the study abroad involves conducting or collaborating on research abroad, or the students and/or faculty are planning to take potentially export-controlled research with them, contact the ECO/EO.
  - g. Contact the institution's ECO/EO about any "red flags" (see Section B.2. Red Flags, below) and issues concerning publication or access restrictions.
  - h. It may be advisable to take a "scrubbed" laptop out of the country in order to ensure that no export-controlled information is being exported.
3. Restrictions on International Travel Based on the Destination.

Most international travel does not present export control issues. Other travel scenarios may present an export control concern that the institution can address by documenting that the travel has an exception from export regulations. Travel to countries designated by the federal government for embargo or sanction reasons or travel with export-controlled items may present a need for an export license or other government authorization prior to departure.

The institution ECO/EO shall assist in evaluating international travel concerns and reduce the impact on international travel plans. Working in advance of travel helps with:

- a. determining whether items, technology and software can be taken or sent internationally without a license;
- b. obtaining an export license; and
- c. reducing the likelihood of a violation of export control and sanction program regulations.

If an export license or other government authorization is required, it must be received prior to travel.

4. Restrictions on the Items You Can Take With You.
- a. When you leave the U.S., even temporarily, for teaching, research, or to attend a conference, everything you take with you is an export, including electronic devices, software and data. This applies to hand-carried items, materials, and devices. All exports should be screened by the individual(s) designated by the institution to evaluate export license requirements.

- b. Research data and information that qualifies for the fundamental research exemption, public domain/publicly available or educational instruction exclusions to the export control regulations can be taken and openly shared or discussed without the need for an export license (e.g., published, educational or research information intended for public distribution, such as a paper being presented at a conference, commercial software, and patent applications). Restrictions on sharing or discussing published or publicly available information in embargoed countries may exist. Contact your ECO/EO to discuss the purpose and scope of any activity in an embargoed country. Prior to travel, verify that your technology, data or information is categorized as fundamental research, public domain/publicly available or educational instruction information.
  - c. An export license is not usually required for most commercially obtained items and equipment (laptop computers, tablets, cell phones, PDAs containing software), unless you are traveling to or through an embargoed or sanctioned country. For sanctioned countries, an export license will be required. If the information stored on these devices is export controlled, standard export control regulations apply and a license may be required.
  - d. Without an export license or license exception, you cannot take with you any commodities, software, or technology that are:
    - 1. Articles, technical data or software controlled under the International Traffic in Arms Regulations (ITAR). For example, a blueprint, document or drawing on your electronic device that is considered ITAR-controlled technical data cannot be taken out of the U.S. without a license;
    - 2. Classified, controlled unclassified, or export controlled;
    - 3. Proprietary, confidential, or sensitive;
    - 4. Specifically designed for military, intelligence, space, encryption software, or nuclear related applications;
    - 5. Data or information subject to a Non-Disclosure Agreement or that results from a project with contractual dissemination restrictions; or
    - 6. Computer software or encryption items with export restrictions or access restrictions for non-U.S. persons.
5. Restrictions on Your Activities While in Your Destination Country.
- a. Limit presentations, seminars and discussions to topics that are not related to export-controlled commodities, software, or technology unless that information has been published, is currently publicly available or in the public domain, or qualifies as fundamental research.
  - b. Presenting or discussing proprietary, unpublished, or export-controlled data or information may constitute an unauthorized export.
  - c. Open seminars are, most likely, appropriate unless they occur in an embargoed or sanctioned country or involve restricted parties.
  - d. Sharing fundamental research or publically available information with foreign colleagues is allowed as long as the colleagues are not prohibited from receiving the information by the federal government (e.g., Specially

Designated Nationals, employees or representatives of the government of a sanctioned country, or restricted parties).

- e. Engaging in research, field work or course instruction outside of the U.S. may not qualify for the fundamental research exclusion and U.S. export control laws and regulations may apply until the work is published or is made publicly available. Prior to providing course instruction or disclosing information resulting from research or field work when outside of the U.S., determine if the information is subject to export control laws and regulations.
  - f. Payments to persons, businesses or organizations may be prohibited by export control laws and regulations.
  - g. Institutions and NSHE must not enter into contracts, conduct business, or otherwise participate, directly or indirectly, in any financial activities with any entity or person found on any government issued restricted, blocked, or denied party lists. This may include international subcontracts, purchases from international vendors or payments to research participants.
  - h. Screening must be conducted to determine if the institution is permitted to do business or provide financial assistance to the individual or entity with whom you will be transacting business (see Section F. Restricted and Denied Party Screening below). The ECO/EO or other designated individual will assist in determining if the financial assistance or transaction is allowed.
6. Restrictions Based on the Laws of the Destination Country.

Your destination countries have their own import and export control regulations that could affect how you can use the exported items in their country or could restrict your ability to take them out of their country. Once outside or when returning to the U.S., your items and electronic devices may be searched or seized in accordance with the laws of the foreign country.

7. License Exceptions for Temporary Exports/Re-export (TMP) or Baggage (BAG).

Items such as commodities, software, and technology taken or sent outside of the U.S. may require an export license pursuant to export control laws and regulations. An item's export control classification may mean no license is required to export the item to your destination country. If a license to export your items is not needed, then pursuing a license exception is unnecessary.

The Export Administration Regulations (EAR) provide an export license exception for the temporary export or re-export of certain items, technology, or software (electronic devices, laptops, cellphones, and PDAs) for professional or personal use as long as regulatory criteria are met. The EAR allow an export license exception for the temporary export (TMP) of qualified "tools of trade." "Tools of trade" is defined as items that are used for institution business, conferences, trade shows, etc. The TMP exception only applies to institution property.

The TMP exception includes items, software and technology that can be: hand carried during your travel (e.g., laptop computers, PDAs, cellular phones); packed in your luggage or baggage; or shipped either before you travel or while you are present in your destination country.

To be eligible for the TMP exception, you must maintain effective control of the item or software during your travel, return the item or software to the U.S. within one year of export, and not take the item to or through Cuba, Iran, North Korea, Syria or (North) Sudan (for the most current list of embargoes countries, visit the U.S. Department of Treasury website).

The BAG exception applies to the temporary export of personal baggage (BAG).

Neither the TMP nor BAG exception applies to:

- Satellite or space-related equipment, components, or software regulated by the EAR;

- Technology associated with high-level encryption products;

- Defense items, technical data, or software regulated by the ITAR;

- Nuclear or atomic energy items regulated by the Nuclear Regulatory Commission or Department of Energy; or

- Shipping or hand-carrying items, technology or software to countries designated in Country Group E:1 of the EAR (currently: Cuba, Iran, North Korea, Syria, and Sudan. Group E:1 countries are subject to change).

#### 8. Inspection and Safeguarding of Items Taken Abroad.

When leaving or returning to the U.S., customs officials are authorized to search or retain items, technology and software including digital cameras, cell phones, media players, and disk drives to look for violations of laws, including export control regulations.

Safeguard all your items and data appropriately and recognize that if you do not want foreign officials or others to have access to your items, do not take them with you.

If you are contacted by an entity or individual that you know to be on a restricted, blocked, or denied persons list, please record as much information as you can about the incident and contact the Export Control Officer or other designated individual.

#### B. SPONSORED PROJECTS/TECHNOLOGY TRANSFER (for research conducted by faculty and students on campus as well as research projects conducted abroad).

##### 1. Export Control Review. The following must be adhered to in the export control review:

- a. Each research award shall be reviewed for terms of the award or provisions that restrict access to or publication of research and technical data, that limit the participation of foreign nationals in the research effort, or that otherwise render the Fundamental Research exclusion inapplicable. The results of such review

shall be indicated on a checklist or other institution form or through an electronic database designed to facilitate such review. The checklist or other form shall be signed and dated by the individual assigned to perform the review or captured electronically through an electronic routing/approval process.

- b. The research sponsor should be contacted to attempt to negotiate the removal or modification of unnecessary provisions in the contract or grant that would destroy the institution's exclusion from export control regulations. If such negotiation does not result in the removal or modification of the identified clauses, the matter will be referred to the ECO/EO for further export control review, including a determination of whether the project falls under the EAR or the ITAR.
  - c. If the ECO/EO determines the project is export controlled, the principal investigator (PI) shall be contacted to determine if foreign nationals will be utilized on the project, whether as employees or students to work on the project. If the PI confirms the intention to hire foreign nationals, then an export control license from the Department of Commerce or Department of State may be needed depending on the classification of the proposed research. If the project is export controlled, a Technology Control Plan (TCP) will need to be developed to prevent any foreign national from gaining access to the controlled information. The need to develop a TCP will be determined by the ECO/EO. The PI may also choose to close the research effort due to the burdens or restrictions associated with complying with the export control regulations.
  - d. No work can begin or an account set up under an export-controlled award or proposed award, until a TCP is in place if required and/or any required export control license has been issued.
2. Red Flags. The following are examples of red flags which indicate the possible presence of export control issues:
- a. References U.S. export control regulations (beyond a mere statement to comply with the law);
  - b. Restricts access or participation based on country of origin;
  - c. Restricts the use of proprietary or confidential information;
  - d. Grants the sponsor pre-publication review and approval for matters other than the inclusion of patent or sponsor proprietary/confidential information;
  - e. Allows the sponsor to claim the results or data generated in the agreement as proprietary or trade secret;
  - f. Involves export-controlled equipment;
  - g. Includes foreign sponsors or collaborators;
  - h. Travel, shipping, or work outside of the United States;
  - i. Military applications of project result;
  - j. Subject matter is of a defense, space, bio-chemical nature;
  - k. Language suggesting the participation in support of the boycott of Israel by the Arab League.

All non-U.S. persons must be screened against the specially designated and restricted parties lists (see Section F. Restricted or Denied Party Screening, below). Export-controlled equipment, data, or technology must be identified and a Technology Control Plan (TCP) developed.



### 3. Technology Control Plan (TCP).

When export-controlled equipment, data, or technology is identified for a project, the ECO will work with the PI to develop and implement a TCP to appropriately secure the equipment, data, or technology from access by unlicensed non-U.S. persons as necessary (see Appendix 3 for the annotated TCP template). The TCP will include:

- a. A commitment to export control compliance;
- b. Identification of the applicable export controls and items or technologies subject to the controls;
- c. A description of the agreed upon security measures to control the item/technology including as appropriate:
  1. Laboratory compartmentalization
  2. Time blocking
  3. Marking
  4. Locked storage
  5. Electronic security
  6. Confidential communications;
- d. Identification and nationality of each individual who will have access to the controlled item or technology;
- e. Personnel screening measures for granting access to the controlled item/technology; and
- f. Appropriate security measures for disposal of the item/technology when use is complete.

Before any individual may have access to export-controlled items or technology, he or she must be informed of the conditions of the TCP and agree to comply with the security measures outlined in the TCP.

### C. ON-CAMPUS FOREIGN VISITORS.

Non-U.S. visitors to export-controlled projects need to be screened and sign an agreement to ensure that controlled technologies or technical data are not inadvertently released to foreign nationals.

1. General Principle. Principal investigators working on export-controlled projects are responsible for ensuring that export-controlled technology or technical data are not released to visiting foreign nationals during their visits.
2. What is export-controlled Technology or Technical Data?
  - a. "Information...required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles" (22 CFR 120.10 of the International Traffic in Arms Regulations (ITAR)). Note that "defense articles" includes essentially all space-based research.
  - b. Specific information necessary for the "development," "production," or "use" of a product on the Commerce Control List. (Part 772 of the Export Administration Regulations (EAR)).
  - c. It does NOT include information concerning "general scientific, mathematical or engineering principles"

- d. It does NOT include information already in the public domain, such as that available through unrestricted publications, unlimited distribution at conferences, or libraries
  - e. It does NOT include fundamental research “where the resulting information is ordinarily published and shared broadly in the scientific community.” However, equipment used to produce the fundamental research may nonetheless be controlled.
  - f. Technology is “released” when it is:
    - 1. available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.)
    - 2. exchanged verbally, including by correspondence;
    - 3. made available by practice or application under the guidance of persons with knowledge of the technology. (See §734.2(b)(3) of the EAR.)
3. “Visitors” refers to any non-NSHE employee or student; common examples include visiting researchers, company representatives, or members of the media. This guidance is primarily targeted towards short-term visitors, and projects involving export-controlled technologies. Things to consider regarding visitors:
- a. Will visitors include non-U.S. citizens?
  - b. Visitors should be asked to indicate their citizenship before being allowed access to controlled equipment or being included in conversations or presentations that might include technical data. Ideally, visitors should be screened in advance to ensure they are not included on any Denied Parties Lists or if an export control license is required
  - c. Non-U.S. visitors need to sign a Visitors Agreement or a Visiting Scholar/Scientist Export Compliance Agreement, attached hereto. A copy must be sent to the institution ECO/EO.
  - d. The person in charge of the visit should ensure that non-US visitors are escorted when visiting facilities with controlled technologies, and are not given keys/keycards, combinations, passwords or other access to research facilities in which export-controlled research is being performed. Escorts are responsible for ensuring that no technical data or controlled equipment are present when non-U.S. visitors are in the area.
4. Restrictions on Involvement of Foreign Visitors:
- a. It may be necessary to restrict non-U.S. visitors from participating in particular activities that would expose them to export-controlled technology or technical data (or obtain an export license for them). This may mean that you need to have secondary screening for certain meetings, briefings, or demonstrations. In these circumstances, it may be easier to provide color-coded visitor tags, so that it’s more readily apparent who cannot attend these restricted activities.
  - b. If you have questions, contact the institution ECO/EO.

## D. INTERNATIONAL SHIPPING.

International shipping is subject to export and import controls, duties, taxes and regulations of the 196 countries -- each different from the others. Fines, payment of unnecessary taxes, confiscation, or incarceration can all result.

### a. Exports.

Everything that crosses the border is an export:

- even if it's temporary;
- even if it wasn't sold;
- even if it will be used for research.

If you're shipping to destinations outside the U.S., remember - once an international shipment is on the way, it's difficult to fix it if there are problems. Delays, unexpected costs, or worse can result.

The institution is the shipper of record, responsible for shipping correctly and getting the paperwork right. FedEx, UPS, DHL, and any freight forwarder may help or offer advice, and they record the shipment in the government's Automated Export System, but if there's a problem, it's institution's problem, not theirs. When an export-controlled item is shipped, the documents must be retained in accordance with standard export control record-keeping regulations as it documents an export control transfer.

Most items, as well as some software and information, are subject to U.S. export controls. The impact of these controls on a particular shipment depends on the item, the country it's being shipped to, the entity or individual who will receive it, and the use to which it will be put. OFAC shall be contacted and involved in any shipments destined for an embargoed country.

There are additional U.S. restrictions on transactions - including but not limited to shipping - with certain countries, entities, and individuals, and restricted party screening of all end-party recipient institutions and/or individuals is required.

Some items are hazardous, and need to be packaged and labeled appropriately, such as: biologicals; chemicals; batteries and fuel cells; and radioactive materials.

Bear in mind that every export from the U.S. is an import somewhere else - your shipment will need to go through Customs in the destination country. Some items may be prohibited or require prior authorization. Some items may incur duty or VAT costs.

### b. Imports.

If you expect to receive a shipment from outside the US, remember all incoming shipments are cleared by U.S. Customs, with varying (and unpredictable) levels of scrutiny.

Some items are restricted at the Customs stage, such as: biological specimens; certain fish and wildlife, and products made from them; fruits, vegetables, plants, seeds, soil; and items from some restricted countries such as Cuba, Iran, Myanmar, and most of Sudan

Some items are restricted at the delivery stage. For instance, some items controlled by the Drug Enforcement Administration can only be delivered if they are appropriately registered with the DEA.

Import duty may be due, based on the item's tariff code and its value. The shipment can be delayed or incur unexpected costs if the paperwork is wrong or incomplete. It can be difficult to fix problems once the shipment is sitting in U.S. Customs.

#### E. RECORD-KEEPING.

The ITAR, EAR and OFAC regulations all stipulate record keeping requirements for regulated export activities. Under each of these sets of regulations, records must be retained for five years after the completion of the activity and made available to the regulating authority upon request. Records that should be retained include all memoranda, notes, correspondence (including email), financial records, shipping documentation, as well as any other information related to the export activities. Additionally, when a license exception (EAR) or license exemption (ITAR) is used, or if a record is requested from a regulatory authority, additional records documenting the applicability of the exception/exemption may be required and in some cases there may be additional reporting requirements.

#### F. RESTRICTED OR DENIED PARTY SCREENING.

Conducting restricted or denied party screening is a necessary component of the institution's export compliance program. This screening determines if you are prohibited from doing business with or providing services of any kind to individuals or entities contained in U.S. government restricted, denied, debarred, designated or blocked persons' lists.

All NSHE institutions have access to Visual Compliance (licensed by eCustoms) software or an equivalent program to screen individuals against mandatory "Restricted" and "Denied Parties" lists maintained by the United States government and allies, world organizations and law enforcement agencies. The software also helps manage other aspects of export control compliance including Export Control Classification Number (ECCN), United States Munitions List (USML) Determinations, License and License Activity Management, and travelling employee and visitor compliance.

Request a restricted party screening by the ECO/EO or other designated individual prior to doing business with a foreign entity or individual.

If, during travel, you are contacted by an individual or entity that wants to engage in business or have you provide other services, please contact the ECO/EO or other designated individual to conduct a restricted party screening to evaluate whether the transaction can occur.

#### G. EXPORT CONTROL TRAINING.

All ECO/EOs and other individuals with responsibility for export control matters shall receive training in export control rules and procedures. The training may include but is not limited to the following export control topics:

1. Scope of export controls
2. Sensitive technologies
3. Export classification
4. EAR, IEEPA, ITAR and OFAC laws and regulations
5. Publicly available - public domain - open source exceptions
6. Restricted Parties

(Added 9/15)